



**VIA ELECTRONIC FILING**

September 19, 2016

Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: Comments of Cardinal Health, Inc. in Support of Anthem et al. Petition  
*Rules and Regulations Implementing the Telephone Consumer Protection Act*  
GC Docket No. 02-278

Dear Ms. Dortch:

Cardinal Health, Inc. (Cardinal Health) appreciates the opportunity to comment on the petition filed by Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management (collectively “Petitioners”)<sup>1</sup> seeking a declaratory ruling and/or clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order (“2015 Order”).<sup>2</sup> More specifically, the Anthem Petition seeks confirmation from the Commission that:

- 1) The provision of a phone number to a “covered entity” or “business associate” (as those terms are defined under HIPAA) constitutes prior express consent for non-telemarketing calls allowed under HIPAA for the purposes of treatment, payment, or health care operations; and
- 2) The prior express consent clarification in paragraph 141 and the non-telemarketing health care message exemption granted in paragraph 147, both in the 2015 Order, cover HIPAA “covered entities” and “business associates” in addition to “healthcare providers”.

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<sup>1</sup> Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order, CG Docket No. 02-278, filed July 28, 2015 (Anthem Petition).

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd. 7961 (2015).

Cardinal Health, Inc. (NYSE: CAH) is a global health services and products company that brings scaled solutions to help its customers thrive in a changing world. It improves the cost-effectiveness of healthcare through solutions that improve the efficiency of the supply chain; optimize the process and performance of healthcare; provide clinically proven, daily use medical products and pharmaceuticals; and connect patients, providers, payers, pharmacists and manufacturers for seamless care coordination and better patient management. Backed by nearly 100 years of experience, Cardinal Health ranks among the top 50 on the *Fortune* 500 and among the *Fortune* Global 100. Cardinal Health has more than 37,000 employees in nearly 60 countries worldwide who are dedicated to improving the healthcare industry.

Cardinal Health fully supports the clarifications requested in the Anthem Petition. In the interest of brevity, Cardinal Health will not rehash the Petitioners' well-reasoned arguments and supporting evidence; however, it agrees that: (1) non-telemarketing healthcare communications provide important health benefits to the recipients of such communications; (2) these type of communications are overwhelmingly welcomed by the recipients and encouraged by federal and state regulatory agencies; (3) healthcare outreach programs cannot be effective without the ability to communicate with patients/consumers on their mobile phones; (4) the use of automated technologies is necessary to implement an effective healthcare outreach program; and (5) healthcare calls are authorized and comprehensively regulated by HIPAA. To that end, Cardinal Health hereby incorporates the Petitioners' arguments and citations as part of these comments.

While the Petitioners' requested clarifications related to "prior express consent" for non-telemarketing healthcare calls are supported by prior Commission rulings and orders,<sup>3</sup> Cardinal Health believes that individuals and businesses will benefit (through better healthcare and increased certainty) if the Commission more directly addresses the issue. Moreover, the Commission's rationale for adopting a limited exemption for non-telemarketing calls made by a "healthcare provider"—primarily the exigency and public interest of such calls—applies equally to calls made by a "covered entity" or "business associate" regulated by HIPAA. The requested clarifications are, therefore, necessary and warranted.

The Anthem Petition proposes specific edits to paragraph 141 in the 2015 TCPA Order to clarify the Commission's prior express consent guidance. Cardinal Health concurs with Petitioners' proposed edits, but recommends the addition of the verbiage underlined below:

We clarify, therefore, that provision of a phone number to a HIPAA "covered entity" or "business associate" as defined by HIPAA's implementing regulations,

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<sup>3</sup> See, e.g., *Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd. 8752, 8769 (1992) ("persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary."); see also GroupMe Declaratory Order, 29 FCC Rcd. 3442 at \*3 ¶ 6 ("a consumer's prior express consent may be obtained through and conveyed by an intermediary"). Although the GroupMe Declaratory Ruling supports the Petitioners' requested clarifications, Cardinal Health concurs with Petitioners that certain third parties (e.g. other covered entities or business associates, employers, etc.) act as an authorized representative of the patient/consumer rather than as an "intermediary" (as that term has been used by the Commission). See Anthem Petition at 19, footnote 62.

whether by an individual, another covered entity or business associate, or a party engaged in an interaction subject to HIPAA, constitutes prior express consent for treatment, payment, and health care operation calls subject to HIPAA by a covered entity and business associate acting on its behalf, if the covered entities and business associates are making calls within the scope of the consent given, and absent instructions to the contrary.” Examples of Prior Express Consent include, but are not limited to, the provision of a telephone number by an employer or a party authorized to implement the health insurance enrollment, application or renewal process on its behalf, and a state Medicaid agency or another governmental entity and/or their business associate(s) as part of an interaction subject to HIPAA.

This recommendation is intended to reflect the practical reality that numbers may be provided to a covered entity or business associate by another covered entity’s business associate (rather than by the other covered entity itself). The Petitioners’ proposed language is arguably broad enough to cover numbers provided by another covered entity’s business associate; however, Cardinal Health believes: (1) the guidance should expressly cover this scenario; and (2) this request is consistent with the Petitioners’ intent.

Thank you for the opportunity to comment and for your consideration of Cardinal Health’s recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Nick Whisler".

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